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April 24, 2014

VIA ONLINE FOIA SYSTEM

Regional Freedom of Information Officer
U.S. EPA, Region II
290 Broadway, 26th Fl.
New York, NY 10007-1866
Fax: (212) 637-5046
E-mail: **r2foia@epa.gov**

**RE: Freedom of Information Act Request for Records Associated With the Draft TMDL
for the New Jersey Portion of the New York/New Jersey Harbor**

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages sent from EPA email accounts and private accounts by EPA personnel, policy statements, data, technical evaluations or analysis, and studies.

Background:

In 2011, EPA provided its evaluation of the data collected for the New Jersey/ New York Harbor with regards to compliance with bacteria standards and, the need to develop a TMDL to establish the degree of pathogen control needed for various areas, to New Jersey Department of Environmental Protection ("NJDEP"). See attached letter from Judith A. Enck, Regional Administrator, EPA Region II to Commissioner Bob Martin, NJDEP dated July 5, 2011. More specifically, EPA noted that there were several harbor CSO permittees including two of the North Hudson Sewerage Authority facilities (Adams Street and River Road) that "will not require water quality-based load reduction for nutrients or pathogens and, as a result, will not be subject to TMDLs." Attachment, at 2.

Additionally, in 2012, EPA provided NJDEP “with a draft of the water quality study and associated documentation that was intended to provide the basis for the pathogens TMDL in the NY/NJ Harbor.” *See* Adams Street Draft NPDES Permit Fact Sheet, at 24.

We understand that NJDEP has taken issue with some of EPA’s findings with regards to the water quality study:

After reviewing the draft water quality study, the Department determined that it was technically deficient, and that the Department could not move forward with the TMDL for pathogens at that time. Rather than continue to wait for an acceptable water quality study and for TMDLs to be adopted, the Department has determined that it is necessary to move forward on individual permits requiring permittees to develop and implement all elements of the [Long Term Control Plan] at this time.

Id. NJDEP’s letter does not provided an explanation for its position or otherwise indicate why or where EPA’s study is deficient

Request:

This request seeks any data, analyses, evaluations, documents or comments submitted by NJDEP to EPA Region II with regards to the draft Total Maximum Daily Loads for pathogens for the New Jersey portion of the New York/New Jersey Harbor prepared by EPA. Any EPA analysis or response to the issues raised is also requested.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsive to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. If the Agency lacks records responsible to a particular item, please note that in the response.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall
JOHN C. HALL



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL - 5 2011

The Honorable Bob Martin
Commissioner
New Jersey Department of Environmental Protection
P.O. Box 402
401 East State Street, 7th Floor
Trenton, New Jersey 88625-0402

Dear Commissioner Martin:

The discharge of raw sewage and other contaminants into water bodies is one of the most serious threats to water quality facing the State of New Jersey. The good news is that, at least for the New York/New Jersey Harbor, the New Jersey Department of Environmental Protection has all the data it needs to tackle this long-term challenge. I am writing to urge NJDEP to expeditiously complete Total Maximum Daily Loads (TMDLs) for nutrients and pathogens for the New Jersey portion of the New York/New Jersey Harbor, and issue permits consistent with those TMDLs. The TMDL wasteload allocations will drive the level of control needed by Combined-Sewer Overflow (CSO) dischargers and other municipal sources to improve water quality throughout the harbor and over time meet the goals of the Clean Water Act.

New Jersey waters are currently impaired by three categories of pollutants: pathogens, nutrients and toxics, with municipal wastewater treatment plants and CSOs continuing to be major sources of nutrients and pathogens. Over 23 billion gallons of untreated sewage are discharged every year from New Jersey's CSO points, making portions of the harbor unsuitable for swimming and other water contact activities such as kayaking. Untreated sewage contains human waste that can carry pathogenic organisms such as bacteria and viruses. In addition, over 33 million pounds of nutrients are discharged by New Jersey permittees into the harbor every year leading to low dissolved oxygen levels in waters such as the Hackensack River. These low dissolved oxygen levels result in significant habitat loss and lower species diversity. "Dead zones" form where dissolved oxygen levels are so low that most aquatic life cannot survive. Many of the detected toxic contaminants, in part a legacy of our heavy industrial past, are known carcinogens and are associated with a range of adverse human health effects, including effects on the nervous system, reproductive and developmental problems, cancer, and genetic impacts. People who eat large amounts of fish from the harbor contaminated with toxics are at risk for adverse effects.

Of the 30 CSO permittees in New Jersey, only 5 have completed implementation of their CSO Long-Term Control Plans (LTCPs), leaving 25 permittees that have not addressed their CSO discharges in accordance with federal law. Of these 25 permittees, 21 discharge to the

New York/New Jersey Harbor, 3 discharge to the tidal portion of the Delaware Estuary and 1 discharges to the Passaic River. We note that several harbor CSO permittees (Fort Lee, Guttenberg, North Hudson - Adams Street, North Hudson - River Road) will not require water quality-based load reductions for nutrients or pathogens and, as a result, will not be subject to TMDLs; therefore, NJDEP can proceed now to issue permits consistent with the U.S. Environmental Protection Agency's CSO Control Policy for these facilities. For the 4 permittees that do not discharge to the harbor, New Jersey needs to complete water quality analyses necessary to determine the appropriate level of treatment for those dischargers and then incorporate the appropriate LTCP requirements into their permits. New Jersey should submit a schedule for issuing permits for these 4 permittees. We note that New Jersey should only issue permits that include effluent limits that derive from and comply with water quality standards and that comply with the EPA's CSO Control Policy.

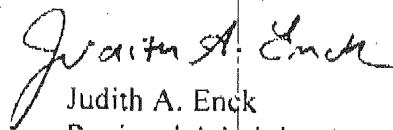
As you know, the EPA Region 2 has been actively working with New Jersey and New York over the last 10 years, under the auspices of the New York/New Jersey Harbor Estuary Program, providing substantial financial and technical support and evaluating with your staff a number of implementation scenarios. At this time, based on feedback from your staff, NJDEP now has all the information necessary to proceed with establishment of pathogen and nutrient TMDLs, issue permits and fully implement the EPA's CSO Control Policy. To that end, I ask that you provide a detailed timeframe for implementing these actions - - actions that are necessary to improve water quality in the New York/New Jersey Harbor and meet the goals of the Clean Water Act. Based on all the technical work that has been performed to date, the EPA's preliminary view is that TMDLs and any necessary water quality standards changes can be completed within the next year and that draft permits that require wasteload allocations derived from those TMDLs can be issued 6 months after that. (I applaud New Jersey's stated goal that the load reductions achieve water quality standards consistent with the highest attainable uses of harbor waters.)

I fully understand the fiscal challenges facing many local governments. Over the years the EPA has provided \$3.8 billion to New Jersey to comply with federal water pollution control mandates. While there will not be enough federal dollars to complete this work, coupled with local government investments, we need a clear path to address this long-term water pollution problem. The Clean Water Act affords tools such as compliance schedules that can provide the flexibility permittees may need to meet their environmental stewardship obligations. In addition, I also want to note that Green Infrastructure can be an enormously valuable, cost-effective implementation tool, especially in a highly urbanized environment such as the New York/New Jersey Harbor. Green Infrastructure works to minimize combined sewer overflows into local waterways by reducing the amount of stormwater entering the combined sewer system. It also provides numerous ancillary benefits such as water and energy savings, neighborhood enhancements and sustainable communities. Green infrastructure is a complement to more traditional infrastructure investments.

Finally, we appreciate New Jersey's continuing to work with the EPA to develop TMDLs for toxic pollutants which are a pervasive problem throughout the New York/New Jersey Harbor. This effort will continue to be a bi-state partnership and an EPA program priority and will complement ongoing efforts to address legacy pollutant sites throughout the harbor area.

Thank you and your staff for all the work that has been done to date; I look forward to completing the task at hand - - improving water quality and the quality of life for those that live, work, and recreate in and around the New York/New Jersey Harbor, one of our nation's premier estuaries.

Sincerely,

A handwritten signature in cursive script, appearing to read "Judith A. Enck".

Judith A. Enck
Regional Administrator